IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.205 OF 2007

Prakash Sadba Dalvi. ..Appellant.

V/s.

Sou Kusumbai Hanmant Bhosale. ..Defendant.

Mr.A.K.Suryawanshi for appellant.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 16, 2007.

P.C. :

1. Heard counsel for the appellant.

2. Two contentions have been raised at the hearing of this appeal. Firstly that the appellant was the absolute owner of the suit property. It was his self-aquired property as he had contributed for the purchase of the property consequent to the grant which was incidentally in the name of his brother. Secondly, it is contended that the sale deed in favour of the defendant No.1 is invalid as it was without consideration. Both these contentions essentially are issues of fact.

3. In so far as first contention is concerned, in my view, the same is contrary to the stand taken

by the appellant before the lower Court. Obviously, no plea was taken on behalf of the appellant that the suit property was his self-acquired property and not joint family property. If such plea was to be taken, obviously the trial Court would have framed the issue in that behalf and decided the matter on its own merits in accordance with the law. Be that as it may, from the discussion in paragraph-12 of the Judgment, it is obvious that the suit property was in the name of brother of the appellant and not in favour of the appellant as such. Assuming for the sake of the argument that the appellant had contributed for the purchase of the property, as the grant was in favour of the brother of the appellant, by no standard, it is possible to even assume, much less, infer that the appellant is the absolute owner of the suit property/Gut No.48 admeasuring 48 acres. The fact that the appellant was not the owner of the suit property is reinforced from one of the condition incorporated in Exh. 40, which provides that the said land should be sold only to the appellant. If the appellant is the owner of the suit property, there was no reason to impose such condition. There can be no condition that the owner be given preference to purchase the property if it is required to be sold. Accordingly, I find no merits in the

first point canvassed before this Court.

4. Even with regard to the second plea raised on behalf of the appellant that the same will have to be rejected having regard to the concurrent finding of fact recorded by the two Courts below. The two Courts below have found as of fact that consideration amount in the sum of Rs.31,000/- was paid to the defendant No.2 at the time of execution of the sale deed. The argument of the appellant that the witness supported the case of the appellant has been rightly discarded by giving preference to the documentary evidence on record.

5. Taking any view of the matter, there is no merit in this appeal. In any case, no substantial question of law arises for consideration. Hence, dismissed.

(A.M.KHANWILKAR,J)